



## INTRODUCTION

Plaintiffs Rick & Patti Wascher (the “Plaintiff’s”) respectfully move the Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to file an AMENDED COMPLAINT, a copy of which is attached hereto as “Attachment 1”.

The proposed amended Complaint makes a number of changes that address issues raised in Defendant's previously filed Motion to Dismiss.

Plaintiff's Third Amended Complaint:

1. Removes the named individuals (i.e., natural persons) as defendants;
2. Corrects defects and errors pointed out by the Defendant's;
3. Maintains the Counts and allegations against the remaining defendants from the original complaint;
4. Explicitly names the “State of Wisconsin”. (The Defendant, State of Wisconsin (“SOW”) accepted service in this case, and their appearance previously was presumed and reserved.);
5. Complies with the Court's Discovery and Pretrial Scheduling Order, namely Section 1.(a).(ii.) thereof requiring the parties to “*Join all claims, remedies, and parties pursuant to Fed. R. Civ. P. 18 and 19*” within 120 days of the Order (i.e., 120 days from August 28, 2018);
6. Accounts for the significant factual and procedural developments that have occurred since the original complaint was filed;
7. Adds additional facts to certain Counts to better state the cause(s) of action(s) and elements asserted; and
8. Corrects typographical errors to help advance this case in the interests of justice.

The proposed amended complaint (Attachment 1), is Plaintiff's Third Amended Complaint-it is *nearly identical* to the document Plaintiff previously filed without leave of court, but in good faith, to pursue justice and efficient disposition of this suit overall.

Plaintiff's sincerely regret not seeking leave of Court for the previous filing, but verily believe this Motion remedies the defects of that age.

Under FRCP 15 and governing case law, leave to amend should be given "freely" when justice so requires Pursuant to LR 7-1. While the parties are required to confer regarding the subject matter of this motion, Defendant's Motion to Dismiss and their multiple supporting briefs already indicate their opposition to Plaintiff's amendment of the Complaint.

Based on the Defendant's statements in opposition contained in their briefs, and Plaintiff's desire to amend the Complaint for the above-stated reasons and more, Plaintiffs respectfully seek the Court's leave to amend, which should be granted for the reasons set forth below.

### **ARGUMENT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave.

The decision whether to grant leave to amend a pleading is within the sound discretion of the Court, and is strictly circumscribed by the proviso that leave [should] be freely given when justice so requires. This Court should freely give leave because justice so requires.

In light of the significant factual and procedural developments since Plaintiffs filed suit in August 2018, and good cause for amending the Complaint is immediately apparent. Most notably, Plaintiff's have removed most of the initially named Defendants by their proposed amended complaint, and corrected defects noted by the Defendants.

Given the very early stage of this litigation, there is no prejudice to Defendants if Plaintiffs are

granted leave to file amended complaint. Moreover, the amendment substantially simplifies the alignment of the parties overall, the scope of discovery, as well as all matters leading up to and including trial, and there is no undue delay in Plaintiff's request to amend.

The determination of whether prejudice would occur often includes assessing whether allowing an amendment would result in additional discovery, cost, and preparation to defend against new facts or new theories. Defendants cannot be thought of as prejudiced, or caught off guard by granting Plaintiff's Motion.

## **VI. Certification and Closing.**

By signing below, I certify to the best of my knowledge, information, and belief that this action: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) has factual contentions having evidentiary support or, *if specifically so identified*, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; (4) and otherwise comply with the requirements of the FRCP and more specifically FRCP Rule 11.

### **VERIFICATION:**

I/We, Ricky R. Wascher and Patricia B. Wascher, Plaintiffs in the above entitled action, hereby verify under penalty of perjury, under the laws of the United States of America, that the above statement of facts and laws are true and correct, according to the best of our current information, knowledge, and belief, so help me/us God, pursuant to 28 U.S.C. 1746(1).

Further, we agree to provide the Clerk's Office with any changes to our address where case related papers may be served. We understand that our failure to keep a current address on file with the

Clerk's Office may result in the dismissal of our case.

Dated: November 18, 2018

Dated: November 18, 2018

Signed: /s Ricky R. Wascher

Signed: /s Patricia B. Wascher

Printed: Ricky R. Wascher, Plaintiff

Printed: Patricia B. Wascher, Plaintiff

**Attachment 1**

**Plaintiff's Third Amended Complaint**

**The “Plaintiffs”:**

*Ricky (“Rick”) R. Wascher, and  
Patricia (“Patti”) B. Wascher  
2868 Sunnyview Lane  
Eugene, Lane County, Oregon 97405*

**Telephone:** 541-654-4569

**E-MAIL:** [RICK@QCduck.com](mailto:RICK@QCduck.com)

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***UNITED STATES DISTRICT COURT***  
**for the**

**District of OREGON**

Eugene, Oregon

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<b>Ricky (“Rick”) R. Wascher,</b>	)	
and	)	<b>Case No. 6:18-cv-1588-MC</b>
<b>Patricia (“Patti”) B. Wascher,</b>	)	
	)	
as “Plaintiffs”.	)	
	)	
<b>v.</b>	)	
	)	
<b>The State of Wisconsin-Department of</b>	)	
<b>Revenue (“DOR”), and</b>	)	
	)	
<b>The State of Wisconsin-Tax Appeals</b>	)	
<b>Commission (“TAC”)</b>	)	
	)	
<b>et al.</b>	)	
	)	
and	)	
	)	
John Doe, (fictitious),	)	
Jane Doe, (fictitious),	)	
	)	
as “Defendants”.	)	
	)	

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**[PROPOSED] ORDER**

Plaintiffs Rick & Patti Wascher (the “Plaintiffs”), filed a “Motion for Leave to File an Amended Complaint and Memorandum of Law in Support” pursuant to Fed. R. Civ. P. 15(a)(2).

Whereas the Court has considered Plaintiff’s motion and memorandum, THE COURT FINDS

that Plaintiff has demonstrated that good cause exists and justice requires the grant of leave to file the proposed amended complaint.

Therefore, Plaintiff's Motion is GRANTED. SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_ 2018.